REMARKS

Claims 1-25 are pending in the application. Claims 21-25 are new. Claims 1, 4, 9-11, 13-15, and 19 have amended by the foregoing amendment to more particularly claim Applicant's invention.

Rejection under 35 U.S.C. § 102

The Examiner rejected claims 4, 13, and 18-20 as anticipated by the '468 patent to Menezes (hereinafter "Menezes"). Applicant respectfully requests reconsideration of the rejection.

Menezes describes that in a field trial, "natural and predator sounds" were used, with a result that "[s]triped bass and white perch exhibited a strong negative taxis (involuntary motion ***away*** from the source)." (Menezes, col. 15, lines 42-43, emphasis added). Therefore, one following the teachings of Menezes would not arrive at a "system for attracting and stimulating aquatic animals," as claimed in claim 4. Rather, according to the teachings of Menezes, it is apparent that the "predator sounds" in Menezes are ***repellent*** sounds which have the polar opposite effect of Applicant's invention as claimed (claim 4 recites "a sound associated with aquatic prey," and claim 13 recites "a sound of aquatic animals feeding"). Accordingly, Menezes fails to anticipate independent claims 4 and 13, and the claims dependent thereon.

Rejection under 35 U.S.C. § 103

The Examiner rejected claims 5-7 and 14-17 as obvious under 35 U.S.C. § 103 in view of Menezes. The Examiner also rejected claims 1-3 as obvious under 35 U.S.C. § 103 based on the collective teachings of the '858 patent to Holt (hereinafter "Holt") and Menezes. Applicant respectfully traverses the rejection.

With respect to claims 10 and 11, the Examiner stated that "col. 15, lines 35-36 [of Menezes] detail that 'predator sounds' are used," and that "[t]he claimed 'fish in distress' and

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'prey being attacked and eaten' sounds, as claimed in claims 10 and 11, are provided by the 'predator sounds' of Menezes."

As discussed above, Menezes describes that in a field trial, "natural and predator sounds" were used, with a result that "[s]triped bass and white perch exhibited a strong negative taxis (involuntary motion ***away*** from the source)." (Menezes, col. 15, lines 42-43, emphasis added). Thus, Applicant respectfully submits that there is a distinction between using predator sounds and sounds of prey. Furthermore, one following the teachings of Menezes would not arrive at a "system for attracting and stimulating aquatic animals," as claimed in claims 5-7 or a "method of attracting and stimulating aquatic animals," as claimed in claims 14-17. Rather, according to the teachings of Menezes, it is apparent that the "predator sounds" in Menezes are ***repellent*** sounds which have the polar opposite effect of attracting aquatic animals, as claimed.

In support of the rejection of claims 2, 8, 9, and 12, the Examiner concluded that the recited limitations would have been obvious design choices. Applicant respectfully traverses the rejections.

With respect to claim 2, the limitations recited are "a second transducer element disposed within said housing," and "a second diaphragm operably connected to said second transducer element," wherein "said second transducer element is positioned opposite said first transducer element." In rejecting claim 2, the Examiner stated that "it is a design choice to duplicate known parts (in the instant case, the transducer and diaphragm of Holt) and obvious to one of ordinary skill in the art."

Claim 8 recites the limitation of "wherein said control signals comprise a delay signal." Claim 9 recites the limitations of "wherein playback of said one or more of said plurality of digital sounds is intermittent." In rejecting claims 8 and 9, the Examiner stated that "it is apparent that delayed and intermittent signals are variables of obvious design choice."

Claim 12 recites the limitations of "wherein said transducer element is positioned opposite from a second transducer element within said housing." In rejecting claim 12, the

Examiner stated that "it is a design choice to duplicate known parts (in the instant case, the transducer element) and obvious to one of ordinary skill in the art."

To supply the omissions in the teachings of the cited references, the Examiner made a determination that the limitations in claims 2, 8, 9, and 12 would have been an obvious design choice. However, that determination has not been supported by any evidence that would have led an artisan to arrive at including a second transducer element and a second diaphragm, or a delay signal, or intermittent playback. The Examiner's unsupported, conclusory statements regarding obvious design choice is no substitute for evidence. Accordingly, the rejection should be withdrawn.

The Examiner rejected claims 1-3 as obvious under 35 U.S.C. § 103 based on Holt in view of Menezes. However, the Office Action lacks any line of reasoning as to why one of ordinary skill in the art would have combined Holt and Menezes. A broad conclusory statement regarding the obviousness of modifying a reference "so as to improve the device," standing alone, is not "evidence." When an Examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) ("The factual inquiry whether to combine references must be thorough and searching. ... It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with."). Because a motivation to combine the cited references is lacking, a *prima facie* case of obviousness has not been made, and accordingly, the rejection of claims 1-3 should be withdrawn. *See* MPEP § 2143.

In addition, the Examiner stated that claim 3 is disclosed in Holt because a fishing lure inherently includes a flotation device. Applicant respectfully submits that a fishing lure does not inherently include a flotation device; rather, many fishing lures are designed to sink. Accordingly, the rejection of claim 3 should be withdrawn.

* * * * *

For the foregoing reasons, Applicant respectfully submits that the claims are allowable over the cited references, and respectfully requests a Notice of Allowance at the earliest possible date.

Please note that the address for correspondence in this matter has changed to the address for Customer No. 29855, as follows:

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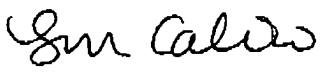
In addition, please change the attorney docket number to **406-0008US**.

Should the Examiner have any questions or concerns that can be addressed via telephone, the Examiner is requested to contact H. Lisa Calico at 512-473-2550, ext. 102.

Respectfully submitted,



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